

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 14, 2003

IN RE: BELL SOUTH'S TARIFF
TO INTRODUCE WELCOMING
REWARD PROGRAM
(TARIFF NO. 03-017)

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DOCKET NO. 03-00060

ORDER ALLOWING TARIFF TO GO INTO EFFECT

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on February 3, 2003 for consideration of the *Tariff to Introduce the BellSouth Welcoming Reward Program, Tariff No. 2003-003* (the "*Tariff*") submitted by BellSouth Telecommunications, Inc. ("BellSouth").

Background

BellSouth submitted the *Tariff* on January 3, 2003 to become effective February 3, 2003 and continue until May 2, 2003. The *Tariff* introduces the "Welcoming Reward Program" for new BellSouth business customers located in Rate Group 5.¹ To qualify, new business customers must: 1) be located in Rate Group 5; 2) have two or more lines per location; 3) have aggregate annual billing of not more than thirty-six thousand dollars (\$36,000.00) annually at the time of enrollment; and 4) must sign a twelve (12) month term contract. New business customers who meet these requirements receive a reward in the form of a one hundred dollar (\$100) credit per new line per location. The *Tariff* provides

that the reward will appear as a one-time credit on the business customer's bill. Additional lines subsequently added by the customer during the *Tariff* period are not eligible for the reward.

On January 22, 2003, a coalition of competitive local exchange carriers² (the "CLEC Coalition" or "Coalition") filed its *Petition to Suspend Tariff and Open a Contested Case Proceeding* ("*Petition*"). The *Petition* requests that the Authority suspend the *Tariff* and open a contested case proceeding to investigate whether it is just and reasonable and otherwise consistent with state law. The *Petition* alleges that the *Tariff* is illegally discriminatory because it excludes existing BellSouth customers who purchase the same services and who have the same competitive alternatives.³ The *Petition* also alleges that the *Tariff's* twelve-month term requirement is anti-competitive because it locks customers into long-term commitments with early termination penalties thereby making it difficult for competing carriers to gain market share.⁴ The *Petition* alleges further that while BellSouth states the offer is available for resale the *Tariff* resale language is ambiguous and if the wholesale discount is not applicable, then the *Tariff* will create a price squeeze by offering services at a retail price lower than the corresponding wholesale price for those services.⁵ The *Petition* concludes that since the *Tariff's* offer is restricted to new customers, it has effectively limited resale opportunities to CLEC customers and thereby created a situation where one CLEC may only resell the *Tariff* to another CLEC's customer.

¹ Rate Group 5 consists of all exchanges located in the metropolitan calling areas of Nashville and Memphis.

² At the time the *Petition* was filed, the CLEC Coalition was comprised of Access Integrated Networks, Inc., Cinergy Communications Company, Xspedius Corporation, and AT&T of the South Central States, Inc.

³ *Petition to Suspend Tariff and Open a Contested Case Proceeding*, p. 1 (Jan. 22, 2003).

⁴ *Id.*, p. 4 (Jan. 22, 2003).

⁵ *Id.*

On January 31, 2003, the Consumer Advocate and Protection Division of the Attorney General's Office (the "CAPD"), citing state and federal law, filed its *Complaint and Petition to Intervene* ("*Intervention*"). In its *Intervention*, the CAPD alleges that the "practical application of the Tariff precludes competing carriers from reselling the program to many potential customers who are not appropriately classified as "new business customers" under the terms of the Tariff."⁶ The *Intervention* also alleges that the *Tariff* creates unjust discrimination between existing BellSouth customers and new (or returning) BellSouth customers.⁷ The *Intervention* alleges further that the *Tariff* "could create an impermissible price squeeze because the bonuses provisioned through the Tariff cannot be resold by competing carriers on their initial attempt to win business customers from BellSouth."⁸

BellSouth Telecommunications, Inc.'s Response to Request to Suspend BellSouth Tariff ("*Response*") was also filed on January 31, 2003. In its *Response*, BellSouth states that the *Tariff* is neither discriminatory nor anti-competitive and that BellSouth must be free to offer discounted pricing or incentive rewards to discrete groups of customers including customers it has lost to competition.⁹ BellSouth points out in its *Response* that, contrary to the Coalition's allegations, the *Tariff* is not limited to former CLEC customers but also includes business customers relocating from out of state to rate group 5 areas in Tennessee.¹⁰ BellSouth also states that the twelve-month term provided for in the *Tariff* and the corresponding early-termination liability provisions contained in the *Tariff* are

⁶ *Complaint and Petition to Intervene*, pp. 2-3 (Jan. 31, 2003).

⁷ *Id.*, p. 3 (Jan. 31, 2003).

⁸ *Id.* at p. 4.

⁹ *BellSouth Telecommunications, Inc.'s Response to Request to Suspend BellSouth Tariff*, p. 2 (Jan. 31, 2003).

¹⁰ *Id.*, p. 3 (Jan. 31, 2003).

fully consistent with previously approved tariffs and termination liability provisions.¹¹ BellSouth also argues in its *Response* that there is no price squeeze because the *Tariff's* promotional period runs no more than ninety (90) days and the promotional prices contained therein do not constitute retail prices.¹² BellSouth further points out that the CLECs are free to resell the underlying services contained in the *Tariff* and to offer their own credits or other rewards in the same manner as BellSouth.¹³ BellSouth also references the CLEC's ability to compete by using unbundled network elements which are priced lower than the retail rates for the elements contained in the *Tariff*.¹⁴ BellSouth concludes in its *Response* that a contested case is unnecessary and will needlessly delay the benefits of the *Tariff* to Tennessee businesses.¹⁵

Findings

The *Tariff*, the *Petition*, and the *Intervention*, were considered at the regularly scheduled Authority conference held on February 3, 2003. Attorney Guy Hicks appeared on behalf of BellSouth, Henry Walker, Esq. Of Boulton, Cummings, Connors & Berry, PLC appeared on behalf of the CLEC Coalition, and Timothy Phillips, Esq. and Joe Shirley, Esq. appeared on behalf of the CAPD. The Directors heard oral argument from the parties on the issues raised in the *Petition* and the *Intervention*. Thereafter, a majority¹⁶ of the Directors on the panel voted:

1. To accept a revision to the *Tariff* such that subscribing customers could terminate their agreement with BellSouth under the *Tariff* after ninety (90) days without termination liability;

¹¹ *Id.* at pp. 12-13.

¹² *Response*, p. 13 (Jan. 31, 2003).

¹³ *Id.*, p. 14 (Jan. 31, 2003).

¹⁴ *Id.* at pp. 14-15.

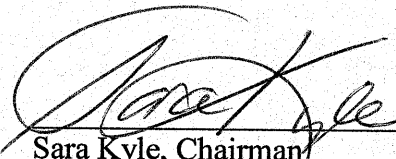
¹⁵ *Id.* at p. 15 (Jan. 31, 2003).

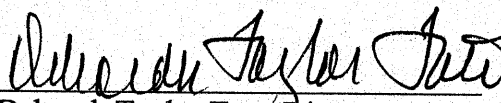
¹⁶ Director Ron Jones declined to vote with the Majority.

2. To allow the *Tariff*, as modified, to go into effect; and
3. To place this matter on the agenda for the regularly scheduled Authority Conference to be held on February 18, 2003 to determine whether to convene a contested case.

IT IS THEREFORE ORDERED THAT:

BellSouth Telecommunications, Inc.'s *Tariff to Introduce the BellSouth Welcoming Reward Program, TRA No. 2003-003* shall be allowed to go into effect subject to the modifications to the *Tariff* noted above and this matter shall come before the voting panel at the regularly scheduled Authority Conference to be held on February 18, 2003, to consider whether to convene a contested case for purposes of addressing the allegations contained in the CLEC Coalition's *Petition to Suspend Tariff and Open a Contested Case Proceeding* and the CAPD's *Complaint and Petition to Intervene*.


Sara Kyle, Chairman


Deborah Taylor Tate, Director

Ron Jones, Director